

ORDINANCE 2008 - 16

**ORDINANCE TO AMEND CHAPTER 8 OF THE  
LAPORTE COUNTY CODE TO AMEND THE  
LAPORTE COUNTY ZONING ORDINANCE**

WHEREAS, LaPorte County Advisory Plan Commission held a public hearing on the 29<sup>th</sup> of July 2008 regarding amendments to the zoning ordinance; and

WHEREAS, after advertising such public hearing, various comments were made concerning such ordinance; and


WHEREAS, a portion of such amendment applies to wind towers and wind tower farms; and

WHEREAS, such section has been recommended for adoption.

NOW THEREFORE be it ordained by the LaPorte County Board of Commissioners that:

1. LaPorte County Zoning Ordinance Chapter 8 of the LaPorte County Code, Section 8-23, currently a grandfather provision, is reconified as Section 8-24 and a new Section 8-23 is added en-captioned WIND ENERGY CONVERSION SYSTEMS (Exhibit "A")
2. This Ordinance shall take effect upon its posting and publication as prescribed by law as applicable.

DATED this 5th day of August, 2008.

  
BILL HAGER, President

  
MIKE BOHACEK, Vice President

  
BARBARA HUSTON, Member

ATTEST

  
TERESA SHUTER, Auditor

exception. Failure to implement or act upon such special exception within the one (1) year will automatically create a vacation of such variance or special exception.

ADDITIONAL AMENDMENT. Amend Section 8-21, Recreational vehicles/travel trailers.

Amend D to read as follows: Any person in violation of the provisions of this Section will have twenty-four (24) hours to remove such recreational vehicle/travel trailer once notified of the violation. Failure to do so will subject the individual to fines and penalties as specified by this Ordinance.

## 8-22 PAGING TOWERS/WIRELESS COMMUNICATIONS PLACEMENT/CELL TOWERS

### A. General Provisions

#### 1. Terms

- a. The term "tower" shall refer to a wireless communications tower and the term "antenna" shall refer to a wireless communications antenna.

#### 2. Requirements

The following requirements apply to all wireless communications facilities regardless of location and are to be supplemented with the specific requirements as set forth below:

- a. The location of any wireless communications tower and accessory equipment building(s) shall comply with other applicable standards of the Zoning Ordinance not specifically indicated in this Section, including but not limited to those for flood plains and wetlands.
- b. All wireless communications facilities shall be fully automated, shall not require attention on a daily basis, and shall be visited only for periodic and necessary maintenance or emergencies.

## SECTION 8-23: WIND ENERGY CONVERSION SYSTEMS.

A. The purpose and intent of this section is to provide for the development of wind generated electricity in LaPorte County but to regulate siting requirements of such systems to provide for the general safety and well being of LaPorte County residents.

B. No individual, business, firm or other entities shall construct, operate or locate within the unincorporated area of LaPorte County Wind Energy Conversion System (WECS) without first having complied with the full provisions of this Chapter.

C. STRUCTURAL REQUIREMENTS.

1. Height. Any large WECS or meteorological tower greater than 200' tall shall require a special exception use permit and meet all requirements and height limitations imposed by the FAA rules and regulations
2. Horizontal extension. The furthest horizontal extension of a WECS shall not extend into a required setback by the zoning district or be closer than 20' to any primary structure or ROW easement for any above ground telephone, electrical transmission, distribution or utilities both under and above ground.

D. SETBACK REQUIREMENTS.

Minimum setbacks for Large Wind Energy Conversion Systems.

Distance from a .....	Minimum Setback Distance
Property line measured from the center of the WECS to the property line.	1.1 times the total height (where the blade tip is at its highest point) for non-participating landowners.
Residential dwellings, measured from the center of the WECS to the nearest corner of the structure.	One thousand feet for non-participating landowners. This is also reciprocal after establishment of an existing WECS.
Road ROW measured from the center of the WECS to the edge of the ROW.	1.1 times the total height (where the blade tip is at its highest point). Provided that the distance is no less than 350'.
Other ROW, such as railroads and utility easements, measured from the center of the WECS to the edge of the ROW.	1.1 times the total height (where the blade tip is at its highest point). Provided that the distance is no less than 350'.
Wetlands, defined by the Corps of Engineers, measured from the center of the WECS to the nearest point of the wetland in question.	Determined by a permit obtained from the Army Corps of Engineers.
Incorporated limits of a municipality, measured from the center of the WECS to city/town limits.	One-third (1/3) mile
A platted and recorded subdivision of La Porte County.	One-Quarter (1/4) mile.

### Minimum setbacks for Small Energy Conversion Systems

Distance from a.....	Minimum Setback Distance
Property line measured from the center of the WECS to the property line.	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less than the required yard setback prescribed for that zoning district.
Residential dwellings, measured from the center of the WECS to the nearest corner of the structure.	1.1 times the total height (where the blade tip is at its highest point).
Road ROW measured from the center of the WECS to the edge of the ROW.	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less than the required yard setback prescribed for that zoning district.
Other ROW, such as railroads and utility easements, measured from the center of the WECS to the edge of the ROW.	1.1 times the total height (where the blade tip is at its highest point), provided that the distance is no less than the required yard setback prescribed for that zoning district.
Wetlands, defined by the Corps of Engineers, measured from the center of the WECS to the nearest point of the wetland in question.	As determined by a permit obtained from the Corps of Engineers.
Public conservation lands, measured from the center of the WECS to the nearest point of the public conservation land in question.	Seven hundred and fifty (750) feet.

### Minimum setbacks for Meteorological Towers

Distance from a .....	Minimum Setback Distance
Property line measured from the center of the WECS to the property line of non-participating landowners.	1.1 times the total height provided that the distance is no less than the required yard setback.
Residential dwellings, measured from the center of the WECS to the nearest corner of the structure.	1.1 times the total height.
Road ROW measured from the center of the WECS to the edge of the ROW.	1.1 times the total height provided that the distance is no less than the required yard setback.
Other ROW, such as railroads and utility easements, measured from the center of the WECS to the edge of the ROW.	1.1 times the total height provided that the distance is no less than the required yard setback.

E. SAFETY DESIGN AND INSTALLATION STANDARDS.

1. Equipment Type.

- a. Turbines. All turbines shall be constructed of new, commercially available equipment.
- b. Towers. All towers shall be guyed unless they are designed for temporary purposes like data collection and will be removed through the owner's expense in a timely manner
- c. Used, experimental or proto-type equipment. Used, experimental or proto-type equipment still in testing may be approved by the BZA per the variance process.
- d. All towers shall not be guyed unless they are designed for temporary purposes.

2. Industry standards and other regulations.

All WECS shall conform to applicable industry standards as well as all local, state and federal regulations. An applicant shall submit certificates of design compliance that wind turbine manufacturers have obtained from Underwriter's Laboratories, Det norske Veritas, Germanischer Lloyd Wind Energie or an equivalent third party.

3. Controls and Brakes.

- a. Braking system. All WECS shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls (including variable pitch, tip and other similar systems) and mechanical brakes. Stall regulations shall not be considered a sufficient braking system for over speed protection.
- b. Operation Mode. All mechanical brakes shall be operated in a fail safe mode.

4. Electrical Components.

- a. All electrical components of the WECS shall conform to applicable local, state and national codes and relevant national and international standards.
- b. Electrical Collection Cables. All WECS electrical collection cables between each WECS shall be located underground unless they are located on public or utility rights-of-way or with prior County approval. All transmission lines that are buried should be at a depth consistent with or greater than local utility and telecommunication underground lines standards or as negotiated with the land owner or the land owner's designate until

the same reach the property line or a substation adjacent to the property line.

5. Color.

a. Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color.

b. The applicant for the WECS shall comply with all applicable FAA requirements.

6. Warnings.

a. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

b. Visible, reflective, colored objects, such as flags, reflectors or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground.

7. Climb Prevention.

All WECS Tower designs must include features to deter climbing from the base of a lattice-based WECS tower or be protected by anti-climbing devices such as:

a. Fences with locking portals at least six (6) feet high; or

b. Anti-climbing devices fifteen (15) feet vertically from the base of the WECS tower.

c. Locked WECS tower doors.

8. Blade Clearance.

The minimum distance between the ground and any protruding blade(s) utilized on a WECS shall be fifteen (15) feet as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

9. Noise and Vibration.

a. Noise and vibration levels shall be in compliance with all County, State and Federal regulations.

b. At no point within 200 feet of a primary residence may the sound pressure levels from a wind turbine exceed the following

sound levels. Sound levels shall be measured with an octave band analyzer or sound level meter and associated filter manufactured in compliance with standards prescribed by the National Standards Institute (ANSI).

10. Utility Interconnection.

The WECS, if interconnected to a utility system shall meet the requirements for interconnection and operate as set forth in the electrical utility's then-current service regulations applicable to WECS.

11. Waste Management.

All solid waste whether generated from supplies, equipment, parts, packaging or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner consistent with industry standards. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall be handled in a manner consistent with all local, state and federal rules and regulations.

12. Lighting.

a. Except with respect to lighting required by the FAA, all lighting shall be shielded so that no glare extends substantially beyond the boundaries of the Wind Farm Facilities.

b. Any WECS thereof declared to be unsafe by the LaPorte County Building Commissioner by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in the County Ordinances governing the removal of Nuisances.

13. Compliance with Additional Regulations.

Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

F. OPERATION AND MAINTENANCE

1. Physical Modifications.

In general, any physical modifications to any WECS that alters the mechanical load, mechanical load path or major electrical components shall require recertification. Like-kind replacements shall not require recertification. Therefore, prior to making any physical modification, the

owner or operator shall confer with the Building Department and/or Plan Commission to determine whether the physical modification requires recertification.

2. Interference.

a. Pre-construction. The applicant shall complete a communications study prior to construction so as to minimize interference with any public or public serving utility transmissions.

b. Post Construction. If, after construction of the WECS, the owner or operator receives a written complaint related to interference with local broadcast residential television, telecommunication, public communication or microwave transmissions, the owner or operator shall take reasonable steps to respond to remedy the interference within (90) days.

c. Failure to Remedy. After (90) days if the interference is not remedied, appropriate action will be taken which can result in the inactivity of the WECS. However, this doesn't apply to interference with private telecommunication systems.

G. DECOMMISSIONING PLAN

Prior to receiving siting approval under this Ordinance, the County and the applicant, owner or operator must formulate a Decommissioning Plan to ensure that the WECS Project is properly decommissioned. The Decommissioning Plan shall include:

1. Assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. Applicant's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface and restoration of the area occupied by the project improvement to as near as practicable to the same condition that existed immediately before construction of such improvements. Prior to issuance of a building permit, the applicant shall provide a contractor cost estimate for demolition and removal of the WECS facility and will provide financial assurance in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, letter of credit or other security acceptable to the County updated every five (5) years for the cost of decommissioning each tower to be constructed under that building permit, which security shall be released when such tower is properly decommissioned as determined by the LaPorte County Building Commissioner. In the event of abandonment by the owner or operator, the applicant will provide an affidavit to the LaPorte County Building Commissioner representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that



facilities are properly decommissioned within twelve (12) months of expiration or earlier termination of the project.

2. The applicant's, owner's or operator's failure to materially comply with any of the above provisions shall constitute a default under this Ordinance.

3. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the owner and operator, setting forth the alleged default(s). Such written notice shall provide the owner and operator a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default(s).

4. If the County determines in its discretion that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the existing County ordinance provisions addressing the resolution of such default(s) shall govern.

5. The Decommissioning Plan will be updated every five (5) years through the use of a bond, letter of credit or other security acceptable to the County.

#### H. APPLICATION PROCEDURES.

##### 1. Conditional Use Permit for all WECS

The application shall include the following items which may be supplemental to the County Plan Commission variance/special exception application:

##### a. Project description

The name(s), address (es) and phone number(s) of the applicant(s), owner and operator and all property owner(s) with WECS on their properties, if known.

A WECS project summary, including to the extent available, a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECS(s) and name plate generating capacity of each WECS.

The maximum height of the WECS tower(s) and maximum diameter of the WECS(s) rotor(s).

A legal description, address and general location of the project.

b. Topographic Map

Depicting the project site and the surrounding area which shall encompass an area at least a quarter mile radius from the proposed project site with contours of not more than five foot intervals.

c. Creation of a Site Plan

This shall include distances and drawn to scale and certified by a registered land surveyor, at an appropriate scale including distances and drawn showing:

The proposed location of the wind energy facility, including planned locations of each WECS tower, guy lines and anchor bases (if any);

WECS access roads; substations; electrical cabling and ancillary equipment;

Primary structures within one quarter of one mile of any WECS;

Property lines, including identification of adjoining properties; setback lines; public roads; location of all above-ground utility lines within a distance of two(2) times the WECS tower height of any WECS tower;

Recognized historic or heritage sites as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources.

Any wetlands based upon delineation prepared in accordance with the applicable U.S. Army Corps of Engineers requirements and guidelines.

d. Correspondence with wildlife agencies

For the purposes of preventing harm to migratory birds, the applicant shall provide written documentation that he/she is in direct cooperation and in accordance with the U.S. Fish and Wildlife Service and IDEM.

2. The Application for an Improvement Location Permit

a. Application Requirements

After approval of the project through the special exception/variance process, the applicant shall apply to the

Building Commissioner for an Improvement after approval from the BZA. In addition to the information required on the Improvement Location permit Application, the applicant shall provide the following information to the Building Commissioner prior to the issuance of an Improvement Location Permit:

1. Dimensional representation of the structural components of the tower construction including the base and footings.

2. Schematic of electrical systems associated with the WECS including all existing and proposed electrical connections.

3. Manufacturer's specifications and installation and operation instructions or specific WECS design information.

4. An engineer or qualified registered professional engineer shall certify as part of the building permit application that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. The analysis shall be accompanied by standard drawings of the wind turbine structure, including the tower, base and footings.

5. All turbines shall be new equipment commercially available. Used, experimental or proto-type equipment still in testing shall be approved by the BZA as per the normal special exception process.

6. Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the LaPorte County Building Commissioner.

7. No appurtenances other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written permission by the BZA.

8. A transportation plan showing how vehicles would access the site and describing the impacts of the proposed energy project on the local and regional road system during construction and operation.

9. A vegetation plan for restoring areas temporarily disturbed during construction.

10. A fire protection plan for construction and operation of the facility.

11. Any other item reasonably requested by the BZA.
12. A drainage plan for construction and operation must be developed and approved by the LaPorte County Drainage Board.
13. An erosion control plan must be developed in consultation with the LaPorte County Soil and Water conservation District.

#### SECTION 8-24; CONCENTRATED ANIMAL CONTROL FEEDING OPERATIONS

(Incorporate the confined animal feeding operations ordinance previously adopted).

#### SECTION 8-25; GRANDFATHER PROVISION. Amend to read as follows:

Any use not in conformity with this ordinance in existence at the time of the adoption may continue. However, such use may not be expanded, modified or transferred without first complying with this ordinance.

- a. A use that exists on the date in which this ordinance or amendment is passed, if otherwise lawful, may be continued. A more restricted use may not be substituted. Such use may not be extended to other parts of the same building or lot or parcel regardless of whether any structural changes may or may not be required.
- b. The non-conforming use ceases to be authorized if it is discontinued for a twelve (12) month period and is not succeeded by any other non-conforming use.
- c. A non-conforming use may not be carried on at a building that is damaged, by more than half of its current assessed value, by fire, by explosion, by and Act of God or the public enemy.
- d. Any parcel of land not in compliance with 8-7 at the time of the adoption of this amendment by the LaPorte County Commissioners will have thirty (30) days after such adoption to be brought into compliance. Compliances are to have such parcel under separate title with individual sidwell and taxing key numbers.

### ARTICLE VI. SUBDIVISION CONTROL

#### SECTION 8-73 POLICY

A. It is hereby declared to be the policy of the County to consider the subdivision of land and the subsequent development of the subdivision plat as subject to the control of the County pursuant to the official Master Plan of the County for the orderly, efficient, and economical development of the County.

B. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace, and land shall not be subdivided until available